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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

JESUS TORRES,

Defendant and Appellant.

F063117

(Super. Ct. No. F97603138-9)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Fresno County. Don Penner, Judge.

Elizabeth Campbell, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and Respondent.

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* Before Wiseman, Acting P.J., Gomes, J., and Kane, J.

FACTS AND PROCEEDINGS

On July 18, 2011, appellant, Jesus Torres, filed a petition for writ of error coram nobis with the trial court. Appellant's writ was based on his contention that when he was convicted of a drug offense in 1998, he was not notified that his conviction could later be used to increase his sentence for a future federal offense. Appellant was subsequently arrested for a federal offense, pled guilty in that action, and his state court conviction was allegedly used to triple his sentence in the federal case. Appellant asserted to the trial court that his trial counsel in the state court action failed to inform him at any time that a consequence of his guilty plea could result in the enhancement of penalties in future criminal actions.

On July 21, 2011, the trial court held that appellant's writ of error coram nobis failed to raise a cognizable claim because it was based on an assertion of ineffective assistance of trial counsel. The court denied the writ. Appellant filed a timely notice of appeal.

APPELLATE COURT REVIEW

Appellant's appointed appellate counsel has filed an opening brief that summarizes the pertinent facts, raises no issues, and requests this court to review the record independently. (*People v. Wende* (1979) 25 Cal.3d 436.) The opening brief also includes the declaration of appellate counsel indicating that appellant was advised he could file his own brief with this court. By letter on December 16, 2011, we invited appellant to submit additional briefing.

Appellant replied with a supplemental brief restating his argument that his original trial counsel in state court was ineffective for failing to properly advise him of an important consequence of his plea. Appellant further explained that after he was convicted of the state drug offense in 1998, he was deported. When he tried to enter the

United States illegally, appellant was arrested and his state court conviction enhanced his federal sentencing exposure 16 levels, for a federal sentence of five years.

The ineffective assistance of counsel is not properly raised in a petition for writ of error coram nobis. (*People v. Ibanez* (1999) 76 Cal.App.4th 537, 546, fn. 13; *People v. Goodrum* (1991) 228 Cal.App.3d 397, 400, fn. 4; *People v. Soriano* (1987) 194 Cal.App.3d 1470, 1477.) The denial of a defendant's request for coram nobis relief is appealable. Where the petition raises only improper claims such as ineffective assistance of trial counsel or misstatements by trial counsel, an appeal from the superior court's ruling may be dismissed as frivolous. (*People v. Gallardo* (2000) 77 Cal.App.4th 971, 982-983, 987; also see *People v. Totari* (2002) 28 Cal.4th 876, 885, fn. 4 [reviewing court initially determines whether defendant has made a prima facie showing of merit in the coram nobis petition, and, if not, may summarily dismiss the appeal].)

We find no error in the trial court's denial of appellant's petition for a writ of error coram nobis.¹ After independent review of the record, we conclude there are no reasonably arguable legal or factual issues.

DISPOSITION

The judgment is affirmed.

¹ The record is limited to the appellant's writ petition, trial court's ruling, notice of appeal, and appellate briefs. The record of appellant's underlying conviction in state superior court is not before us. We cannot discern from the present record whether the trial court made the proper advisement prior to accepting appellant's admission of the state drug offense pursuant to Penal Code section 1016.5, subdivision (a). We note, however, the appellant does not assert that the trial court failed to give him the proper statutory admonition, only that he was not adequately advised by his trial counsel.